IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 6224 /2006

PETITIONER : Rajesh Ram Nayak
S/o Shri Dukhan Nayak
Aged about 30 years,
Caste- Ghasi (S.C.),
Occupation- Unemployed,
R/o Railway Qr. No. 1293/7,
Bilaspur (C.G.).

P.R. No. 6262/06
Presented by Shri K.K. Singh
dated 1-11-06

- Versus-

RESPONDENTS : 1. South Eastern Central Railway,
Through its General Manager,
Bilaspur (C.G.

2. South Eastern Railway,
Through its General Manager,
Gardenreach, Kolkata (W.B.).

3. Divisional Security Commissioner,
R. P. F. South Eastern Railway,
Bilaspur.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT OF CERTIORARI, MANDAMUS OR ANY OTHER WRIT OR DIRECTION TO DO JUSTICE IN THE MATTER.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 6224 of 2006

Petitioner — Rajesh Ram Nayak

Versus

Respondents — South Eastern Central Railway and others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Present: Mr. K.K. Singh, Advocate for the petitioner.
None appears for the respondents.

ORDER

(Passed on 19th Day of January, 2007)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner belongs to Scheduled Caste. He made an application for appointment on the post of Constable in the Railway Protection Force in the year 1997. Admittedly, the petitioner was successful in the written examination. Thereafter, the petitioner was required to appear for physical test. The petitioner was not found fit in the medical de-categorization fitness test and as such, the petitioner could not be appointed on the post of Constable in the Railway Protection Force.

2. The petitioner has filed this petition for seeking an alternative appointment in view of the circular, which is mentioned in Chapter 7

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at para 14 of the Railway Service Rules and Labour Law Code, and reads as under:-

14. स्वास्थ्य के आधार पर अयोग्य सीधी भर्ती वाले उम्मीदवार :

अनु. जाति एवं अनुसूचित जनजाति के उम्मीदवार जो कि सीधी भर्ती के अन्तर्गत किसी विशेष पद के लिए चुने जाते हैं लेकिन जब उस विशेष पद के लिए स्वास्थ्य के आधार पर उन्हें अयोग्य घोषित किया जाता है तो किसी और पद के लिए जिसके लिए वह स्वास्थ्य की दृष्टि से स्वस्थ तथा उस पद पर आरक्षित पद की कमी है तथा कमी को पूरा किया जाना बकाया है, महाप्रबंधक की शक्तियों के अधीन उसके व्यक्तिगत अधिकार द्वारा पूरा किया जाना चाहिए ।

[रेलवे बोर्ड पत्रांक ई. (एस.सी.टी.) 58 सी. एस. 1/2/13 दिनांक 25.11.1958, ई. (एस.सी.टी.) सी. एम. 1/2/13 दिनांक 10.6.1959 और 76–ई. (एस.सी.टी.) 15/5 दिनांक 13.2.1976 के अनुसार]

रेलवे भर्ती बोर्ड को मुख्य पैनल में सामान्य वर्ग के अभ्यर्थियों की सूची आरक्षित वर्ग की सूची के स्थान पर नहीं भेजनी चाहिए, इस प्रकार की सूची केवल उस स्थिति में भेजी जानी चाहिए जब महाप्रबंधक सत्यापित करें कि वह अपने विशेष अधिकार के अत्तर्गत आरक्षित वर्ग के उम्मीदवार प्राप्त करने में असफल है । इसके बारे में सूचना रेलवे बोर्ड को भेजी जाए ।

[रेलवे बोर्ड पत्रांक ई. (एस.सी.टी.) 74 सी. एम. /5/37 दिनांक 30.6.1975 के अनुसार]

3. The circular is not a part of rule. It provides for appointment on alternative post, where the candidate is medically un-fit. Circular simply provides that General Manager may consider appointment in any other department where the reserved vacancy is available. The circular is not in the nature of mandatory direction, but it is at the discretion of General Manager, keeping in view availability of suitable

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post in reserved category to appoint in any other post. The petitioner has not pointed out availability of any post wherein, the case of the petitioner could be considered. It is also not pointed out that the General Manager has declined to exercise his discretionary power, arbitrarily and whimsically. Thus, no direction can be issued to the General Manager to exercise his discretionary power in favour of the petitioner, where the petitioner has no indefeasible right to appointment.

4. Be that as it may, by virtue of this circular, the petitioner has no right to the post. The petitioner cannot claim that any legal right, in view of the circular, has accrued in his favour, which may be enforced by this Court.

5. In view of the above stated facts, there is no semblance of any right. The petition is devoid of merit. Thus, this writ petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Subhash